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STATE VERSUS FEDERAL JURISDICTION IN LABOR DISPUTES: THE *Garner* CASE

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I

For years, the Supreme Court has been vexed with the problem of just what jurisdiction the States will be allowed over cases involving unfair labor practices, where the particular unfair labor practice affects interstate commerce. Now, with *Joseph Garner v. Teamsters Local No. 776*,[1] this problem seems to have been solved. Or has it?

Briefly, here are the facts in the *Garner* case. Petitioners sought an injunction against certain picketing by defendant union in the state court[2]. Four of the petitioner's twenty-four employees were members of the union, and petitioner had no objection to the rest becoming members. No controversy, strike or labor dispute was in progress. Petitioners were engaged in interstate commerce, and the picketing reduced their business as much as ninety-five per cent. The lower court granted the restraining order.

On appeal to the Supreme Court of Pennsylvania[3], the restraining order was dissolved, the court stating: "In our opinion such provisions for a comprehensive remedy precluded any state action by way of a different or additional remedy for the correction of the identical grievance." The court, of course, was referring to remedies provided by the National Labor Relations Act[4], as amended by the Labor Management Relations Act of 1947.[5]

Now what was the particular act on the part of the parties which was in violation of federal legislation? The purpose of the picketing was thought to be to coerce the employer, through a reduction of his profits by picketing, to in turn coerce his employees into joining the defendant

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1. 74 Sup. Ct. 161, 98 L.Ed. 161 (1953).
2. 62 Dauph Co. Rep. 339 (1952).
3. 373 Pa. 19, 94 A. 2d 893 (1953).
4. 49 STAT. 449 (1935), as amended 29 U.S.C. § 151 *et seq.* (1946).
5. *Ibid.*

union. This is an unfair labor practice under the federal Act, which provides:

> "It shall be an unfair labor practice for an employer . . . (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . ."[6]

Any such conduct amounting to an unfair labor practice is within the jurisdiction of the labor Board.[7]

On appeal to the Supreme Court of the United States, the Pennsylvania high court was sustained. It was pointed out by the Court that this was not a case of injurious conduct which the Board was without express power to prevent, and which if it could not be prevented by the state, could not be prevented at all. In such cases, the Court has declined to find an implied exclusion of state powers.[8] Similarly, this was not a case of "mass picketing, threatening of employees, obstructing streets and highways, or picketing homes. We have held that the state still may exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' "[9]

The *Garner* case involved a type of conduct which was definitely within the jurisdiction of the Board, and there were no extenuating circumstances which would remove it from such jurisdiction.

Since the Board has the power and authority to take in hand such a controversy, the issue became whether the State, through its courts, could judge the same controversy and extend its own form of relief.

The main holding of the case is contained within the next few lines: "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially

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6. 61 STAT. 140 (1937), 29 U.S.C. § 158(a) (Supp. III, 1946).
7. *Id.*, § 160(j).
8. International Union, U.A.W. v. Wisconsin Board, 336 U.S. 245, 69 Sup. Ct. 516, 96 L.Ed. 651 (1949).
9. Allen-Bradley Local v. Wisconsin Board, 315 U.S. 740, 86 L.Ed. 1154, 62 Sup. Ct. 820 (1942).

designed procedures was necessary to obtain uniform application of its substantive rules and to avoid diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or on application of the federal Board, precludes state courts from doing so. . . . And the reasons for excluding state administrative bodies from assuming control of matters expressly placed within the competence of the federal Board also excludes state courts from like action."[10]

The remainder of the case was devoted to overruling the argument that the Board remedy was public, while the state court remedy was private, and that thus the two were not mutually exclusive remedies.

Since the petitioner could have presented his grievance to the National Labor Relations Board, and did not, his grievance was held not to be subject to litigation in the state courts.

This case was at first hailed as the great emancipating decision—emancipating labor unions from having to try their cases in state courts where there was all too often little sympathy shown for the union cause. Or, at least, sympathy for the way in which the labor cause was manifested.

II

Before discussing the cases which have been decided since the *Garner* case, the case of *Universal Car & Service Co. v. IAM,*[11] should be noted. This case, and the views set out therein, have become increasingly important since the *Garner* decision. And for this reason. The federal Board can not be said to have jurisdiction over acts which amount to unfair labor practices unless such acts are committed by or against employers who are engaged in interstate commerce or whose activities substantially affect such commerce.

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10. 74 Sup. Ct. 161, 165, 98 L.Ed. 161, 165 (1953).

11. Universal Car & Service Co. v. Iam, U.S. Dist. Ct., Western Dist. of Michigan, Southern Div., Aug. 25, 1953; and see: Howell Chevrolet Co. v. N.L.R.B., 98 L.Ed. 159 (1953).

Citing and quoting from *Clover Fork Coal Co. v. NLRB*,[12] the court in the *Universal Car* case said: "It must, we think, be concluded that it is the prevention of strikes, the impact of which upon interstate commerce when and if they occur will directly or immediately burden or obstruct such commerce, that furnishes the ground for the execise of the congressional power. The immediacy and directness of the effect of industrial strife upon interstate commerce is the test of jurisdiction, and unfair labor practices fall within the scope of the Act by reason of the fact that long and painful experiences teaches that in the generality of cases, if not in particular instances, they lead to such strife."[13]

The particular controversy in the *Universal Car* case, arose out of picketing by the union to coerce the company to coerce its employees into joining the union. The union removed to the federal court, arguing that there was no jurisdiction in the state court. In remanding the case to the state court from which it was removed, the federal court applied the de minimis rule, and stated:

> "Therefore, as the alleged labor practices and activities of the defendants did not obstruct or tend to obstruct commerce, and as the labor dispute here in question appears to be purely a local dispute, this Court is without jurisdiction, and the case should be remanded to the state court from which it was removed."[14]

True, this case arose prior to the decision in the *Garner* case, but there is no indication that there has been any fundamental change in the law as to what amounts to interstate commerce. It would seem that, on the basis of this case and on the ample authority cited therein, an act which amounts to an unfair labor practice but which does not affect interstate commerce is within the jurisdiction of the state court.

III

The first reported case to discuss the *Garner* case was *Irving Subway Grating Co. v. Silverman*.[15] This case involved a removal to the federal court by defendant union. The National Labor Relations Board had declined to act in the case previous to the removal, and had directed the

12. 97 F. 2d 331, 334 (6th Cir. 1938).
13. *Supra* note 11.
14. *Ibid.*
15. 117 F. Supp. 671 (E.D. N.Y. 1953).

plaintiff to seek its remedy in the state court. In discussing the *Garner* case, the court said:

"While that case involved peaceful picketing and circumstances which were clearly within the jurisdiction of the National Labor Relations Board pursuant to the National Labor Relations Act, the Supreme Court of the United States held therein that state control of the same was pre-empted. The Court also declared that the said Act 'leaves much to the states'. . . . It will be recalled that the National Labor Relations Board declined to act in the case at bar. . . . Hence, we do not have, as stated in the *Garner* case, a 'multiplicity of tribunals and a diversity of procedures', which 'are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law'. The State should be free to exercise its police power which is clearly excluded from federal jurisdiction in violence cases, especially where the said Board, . . . directed the plaintiff to pursue its remedy in the State court."[16]

The cause was remanded to the state court, with the court saying: ". . . the contention that Congress intended to legislate for the entire field of labor controversy and excluded all state jurisdiction is untenable."

Thus, we have an exception to the *Garner* case, and that is where the Board, although it might have jurisdiction, refuses to exercise its jurisdiction. In such a case, the parties may pursue their remedies in the state court.

In the case of *Building Trades Council v. Kinard Construction Co.*,[17] the Supreme Court of the United States, on writ of certiorari to the Supreme Court of Alabama, reversed a judgment by the state supreme court which granted injunctive relief against picketing which was an unfair labor practice under the National Labor Relations Act and which affected commerce. This was done on the basis of the *Garner* case. It was held that it was unnecessary to decide whether or not the state court would have jurisdiction to grant relief in such case if the National Labor Relations Board should decline to exercise its jurisdiction, since there was no clear showing that application for relief had been made or that it would have been futile to make such application.

Certiorari has also been granted by the Supreme Court in the case of *Capital Service, Inc. v. National Labor Relations Board.*[18] The writ was

16. *Id.* at 679.
17. 74 Sup. Ct. 373 (1954).
18. 74 Sup. Ct. 375 (1954).

limited to the following question: "In view of the fact that exclusive jurisdiction over the subject matter was in the National Labor Relations Board . . . [cited *Garner* case] could the Federal District Court, on application of the Board, enjoin petitioners from enforcing an injunction already obtained from the State Court."

In the state court,[19] Capital Service had obtained a restraining order restraining defendant union from peacefully picketing, pursuant to a labor dispute between the parties. An unfair labor practice charge had been filed with the Board, and the purpose of the restraining order was to maintain the status quo pending the outcome of the complaint.

The Board had then gone into federal court seeking to restrain Capital Service from enforcing the restraining order they had obtained in the state court.

The federal court of appeals had stated: "The boycott of the product of Service's bakers to restrain their opposition to and to compel their unionization is prohibited by Section 8(b) (1) of the Taft-Hartley Act. . . . We think Congress has pre-empted this function to the National Labor Relations Board and that the state court is without jurisdiction to issue such an injunction."[20]

And further: "We think that control by the federal tribunals is exclusive. 29 U.S.C.A. Sect. 160(a) of the original Act provided: 'The Board is empowered . . . to prevent any person from engaging in any unfair labor practice affecting commerce. This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise.' . . . As amended by the Taft-Hartley Act, these two sentences remain save that the words 'shall be exclusive and' are stricken, and the states given power of enforcement by agreement with the Board in certain cases by adding the following proviso after the word 'otherwise': 'Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the

19. See 204 F. 2d 848, 850 (9th Cir. 1953).
20. *Id.* at 851.

determination of such cases by such agency is inconsistent with the corresponding provision of this sub-chapter or has received a construction inconsistent therewith.'

"We construe this amendment as giving to a state a right of enforcement only by an agreement reached by it with the Board. Here there was no such agreement."[21]

Thus, the restraining order issued from the federal court, restraining Capital Service from enforcing the restraining order it had already obtained from the state court. It must be remembered that this case was decided about a year prior to the *Garner* case.

In *Tube Distributors v. Silverman*,[22] the state court dismissed plaintiff's motion for an injunction pendente lite. The picketing sought to be enjoined was designed to secure recognition of defendant union as bargaining agent for plaintiff's employees. Said the court: It "is precisely the kind of thing which *Garner v. Teamsters Union* . . . holds cannot be enjoined by a state court—not because federal courts have exclusive jurisdiction to enjoin it, but because the subject is one which Congress has confided to the National Labor Relations Board."

Freydberg v. ILGWU[23] involved a discontinuation by plaintiff of its garment manufacturing in New York, and its removal to another state. Defendant union had had collective bargaining agreements with plaintiff for a number of years, and commenced picketing of plaintiff's show rooms and executive offices, which plaintiff continued to maintain in New York. On plaintiff's motion for an injunction pendente lite, defendant moved to dismiss, arguing via the *Garner* case that the state court had no jurisdiction.

The court held that the picketing was not for a lawful labor objective—*i.e.*, was to coerce plaintiff into continuing to maintain its plant in New York—and stated:

"As to the question of jurisdiction, I assume in Defendant's favor that Plaintiff is engaged in interstate commerce. From that it follows that existing federal statutes so completely cover the subject of labor relations in interstate commerce that neither state statutes nor state

21. *Id.* at 854.
22. 131 N.Y.L.J. 7 (Sup. Ct., N.Y. County, Jan. 22, 1954).
23. 131 N.Y.L.J. 8 (Sup. Ct., Special Term, Jan. 21, 1954).

courts can add to or substract from the rights and immunities of employers and employees as specified in those federal statutes . . . [citing *Garner* case]. . . . But my holding that this picketing is not for a lawful labor objective takes this case out of the field of labor relations and out of the doctrine of those cases. This picketing is not a right conferred, recognized or regulated by any federal statute, and is not designed to enforce or secure recognition of any such right, or to prevent conduct by plaintiff which any federal statute denounces as 'an unfair labor practice'; and the injunction is not sought in order to prevent conduct by defendants which any federal statute denounces as an unfair labor practice. The picketing is a tortious act under the law of New York entirely apart from any labor relation; and as I see it this case is precisely what the Supreme Court said the *Garner* case was not, namely, 'an instance of injurious conduct which the National Labor Relations Board is without express power to prevent and which therefore either is "governable by the State or is entirely ungoverned".' "[24]

The case of *Alemeida Bus Lines v. Curran*[25] involved an employer who was being proceeded against under Massachusetts laws by a state agency for violations of state law. The violations were at the same time unfair labor practices, but at the time they had been committed, the federal Board had not been exercising its jurisdiction over such acts. Proceedings were brought before the Massachusetts Labor Relations Commission. The bus company then went to the federal district court, seeking a restraining order against proceedings before the state board, on the theory of exclusive jurisdiction of the subject matter being with the National Labor Relations Board.

The federal court of appeals held that a federal court may not enjoin matters before a state board on the ground that the matter involved is within the exclusive jurisdiction of the federal Board where said Board had declined to exercise its jurisdiction in respect to the conduct. It must be remembered that the only reason for the federal Board declining to exercise its jurisdiction in this case was because of the fact that at the time the acts complained of were committed, the Board had not been exercising jurisdiction over businesses such as the bus company's.

Apparently, then, had the act complained of been conduct which the

24. *Ibid.*
25. 209 F. 2d 680 (1st Cir. 1954).

Board should and would have exercised jurisdiction over, the federal court would have issued its restraining order as to proceedings before the state board.

Isbrandtsen Co. v. Schelero[26] involved one phase of the current struggle now being waged on the New York waterfront between two embattled Longshoremen's unions. Picketing had been started by the International Longshoremen's Union, A.F. of L., over the discharge of one of the members of said union. The union stated the discharge was because of the employee's union activities, and the company said the discharge was for cause. If the union's contention were correct, then the company's action would amount to an unfair labor practice under Section 8(a) (1) and 8(a) (3)[27] of the federal Act. If the company's contentions were correct, then, of course, there would be no unfair labor practice. Defendants further argued that the union conduct amounted to an unfair labor practice under Section 8(b) (1) (B)—"It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances."

The court found that the picketing had arisen out of the company's refusal to allow the discharged employee the right to act as hiring agent for the company, and the subsequent discharge of the employee. It was also found to be for the purpose of inducting engineers employed by the steamship line to refuse to furnish power for unloading of company ships by a stevedoring outfit.

On issuance by the state court of a restraining order against the picketing, defendants removed to the federal court. Plaintiff moved to remand. The court said: "The case of Garner v. Teamsters . . . is precisely inapplicable, since it deals with an employer's desire to be protected against union efforts to recruit membership from among the employees

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26. 118 F. Supp. 579 (E.D.N.Y. 1954).

27. 29 U.S.C. § 158(a) (1) (3): "Sect. 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; . . . .

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . ."

of those plaintiffs; that activity was held to fall within the domain of federal control established by Congress."[28]

There was no unfair labor practice involved, found the court, because there was no interference by the company with the protected activities of the Longshoremen;[29] there was no attempt by the union to coerce the company in the choice of its bargaining representatives[30]; there was no design by the union to cause the company to discriminate in hire or tenure of employment[31]; there was a type of secondary boycott on the part of the union, but not for the unlawful purpose of forcing an employer to cease handling or dealing in the products of a producer or to cease doing business with any other person[32], or requiring an employer to assign any particular work to employees in a particular labor organization[33]; and there was no attempt to cause the company to pay any money in the nature of an exaction for work not performed or not to be performed.[34]

Since there was no unfair labor practice involved, either by virtue of any allegation made by either party or by examination of the physical acts of the disputants, the case was remanded to the state court. In such a case the National Labor Relations Act does not deprive the state courts of jurisdiction.

An interesting point in this case is that had an unfair labor practice been found, the court suggested that it would have refused to remand to the state court, even though it could not grant the relief requested, *i.e.*, a restraining order. This was on the basis of *Pocahontas v. Portland*[35], a case which has in the past received very little support from federal courts in other districts, but which has received increasing support since the *Garner* decision.

What, then, is the effect of a refusal of the federal court to remand to the state court, insofar as the restraining order issued by the state court is concerned? The federal removal statute[36] provides as follows: "When-

28. 118 F. Supp. 579, 582.
29. 29 U.S.C. § 158(a) (1) (1946).
30. *Id.*, § 158(b) (4) (B).
31. *Id.*, § 158(b) (2).
32. *Id.*, § 158(b) (4) (A).
33. *Id.*, § 158(b) (4) (D).
34. *Id.*, § 158(b) (6).
35. Pocahontas Term Corp. v. Portland Bldg. & Const. Tr. Co., 93 F. Supp. 217 (D. Me. 1950).
36. 62 STAT. 940 (1948); 28 U.S.C.A. § 1450 (1950).

ever any action is removed from a State court to a district of the United States. . . .

"All injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court."

Since the federal distirct court is without jurisdiction to issue injunctions in cases involving labor disputes (except in certain specified instances and on suit brought by the NLRB[37]), it would seem that the only remedy for the one against whom the restraining order was issued is to move the federal court to dissolve the state court order.

In *United Mineral & Chemical Corp v. Katz*,[38] plaintiff obtained an injunction against the union's picketing in the state court, where such picketing amounted to an unfair labor practice—*i.e.*, picketing to coerce plaintiff into recognizing the union as the bargaining representative of its employees.[39] The picketing involved violence, picketing of corporate officers' homes, assaults, destruction of property, etc.

Plaintiff had filed his complaint with the federal Board for investigation and certification of representatives pursuant to Section 9(c), subdiv. 1, Paragraph (b) of the Act.

The federal court, to which the union had removed the case, said on plaintiff's motion to remand: "It is entirely clear from a reading of the complaint that the action sounds in tort, alleging violence and conspiracy, and was properly brought in the State court. . . . Nor is the recent decision by the Supreme Court in *Garner v. Teamsters Local Union 776*, . . . in any respect conflicting with the view taken herein. Mr. Justice Jackson said: 'We have held that the State still may exercise its historic powers over such traditionally local matters as public safety and order, and the use of streets and highways. . . ' ".[40]

Thus, even though an unfair labor practice affecting commerce is involved, the state court still has jurisdiction to issue injunctions as to actions which cause a breach of the state's peace.

IAM, AFL, Local 924 v. Goff-McNair Mtr. Co.[41] involved picketing

37. 29 U.S.C. § 10(e).
38. 118 F. Supp. 443 (E.D. N.Y. 1954).
39. 29 U.S.C. § 158(a) (1) and (b) (1).
40. 118 F. Supp. 433, 434.
41. 264 S.W. 2d 48 (Ark. 1954).

on the part of defendant union in pursuance of a demand to the company for a closed shop contract. The court issued a permanent injunction against the picketing. Such a closed shop contract would have been in contravention of state law.

The Arkansas court cited the case of *International Union v. Wisconsin Board*[42] for the proposition that there is no possibility of conflict or overlapping between the authority of the federal and state boards, since the federal Board had no authority either to investigate, approve, or forbid the union conduct in question. Such conduct would have to be governable by the state or entirely ungoverned.

The rule as laid down in *Allen-Bradley Local v. Wisconsin Board*[43] was also cited with approval, that: ". . . the state may police these strike activities . . . because Congress has not made such employee and union conduct as is involved . . . subject to regulation by the federal Board."

The *Garner* case was rejected as applicable, since there was no unfair labor practice found.

The first Missouri case to deal with the *Garner* case was *Anheuser-Busch v. Weber.*[44] The union picketed plaintiff's brewery as part of an attempt to get included in their collective bargaining agreement with plaintiff a clause providing that the company would not let contracts for new construction to any independent contractor who did not employ members of the machinists union to take care of the moving, erecting and installing of machinery.

The bargaining agreement provided that the machinists union should do such for all work performed within the employer's plant. What, in effect, was desired by the machinists union was to get work for their union which had customarily been done by the Millwrights Union.

An injunction was obtained by the company on the theory that the picketing by defendant was a conspiracy in restraint of trade under Section 416.010, *Missouri Revised Statutes* (1949). The conspiracy would be to compel plaintiff to conspire with the union and its members against certain contractors and their employees—*i.e.,* all contractors who did not employ members of the machinists union.

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42. 336 U.S. 245 (1949).
43. 315 U.S. 740 (1942).
44. 265 S.W. 2d 325 (Mo. 1954).

The important fact about this case, in its relation to the *Garner* case, is that an unfair labor practice had been filed with the Board, and a finding entered pursuant thereto that no unfair labor practice existed.[45]

The Supreme Court of Missouri rejected the *Garner* case as applicable to the facts, saying: "A jurisdictional quarrel between two rival labor unions is not a labor dispute within the Norris-LaGuardia Act, the Wagner Act, or the Taft-Hartley Act."[46]

The case of *Algome Plywood & Veneer Co. v. Wisconsin Board*[47] was cited with approval to the effect that: "Since the enumeration by the Wagner Act and the Taft-Hartley Act of unfair labor practices over which the National Board has exclusive jurisdiction does not prevent the States from enforcing their own policies in matters not governed by the federal law, such freedom of action by a State cannot be lost because the National Board has once held an election under the Wagner Act. The character of activities left to State regulation is not changed by the fact of certification."[48]

There is no question but what in dealing with the case as it did, the Missouri Supreme Court has followed the great weight of authority laid down by other courts in other jurisdictions since the *Garner* case. The *Garner* case, as has been seen, dealt only with unfair labor practices affecting commerce, while here we had a definite finding by the Board itself that no unfair labor practice existed. Since no such practice existed, the federal court would have no jurisdiction to deal with the case on that ground alone. Thus, the conduct on the part of the union, or management, in such cases, is conduct which is either governable by the states or completely ungoverned.

Wichita Falls & Southern R.R. v. Lodge No. 1476, IAM[49] involved secondary boycott picketing. Plaintiff had sought an injunction against the picketing in the state court on the basis that defendants were guilty of a secondary boycott. The trail court sustained defendant's plea to the jurisdiction, and dismissed plaintiff's petition. On appeal, the trial court was affirmed.

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45. 101 N.L.R.B. 346 (No. 87) (1952).
46. 265 S.W. 2d 325, 333 (Mo. 1954).
47. 336 U.S. 301, 69 Sup. Ct. 58, 93 L.Ed. 702 (1949).
48. 265 S.W. 2d 325, 333 (Mo. 1954).
49. Texas Court of Civil Appeals Feb. 19, 1954.

Citing the *Garner* case, the appellate court said that the remedy for plaintiff is to be found in the procedure provided for in the Labor Management Relations Act. "Constitutionally exerted power of Congress becomes the supreme law of the land, 'anything in the constitution or laws of any state to the contrary notwithstanding;' and in the field of Federal-state relations we are bound by the decisions of the United States Supreme Court."[50]

The reverse side of the coin appeared in *International Brotherhood of Teamsters v. Red Arrow Freight Lines*[51] where a Teamsters local sought from the state court a restraining order. The suit was to restrain defendant and a rival union from bargaining, plaintiffs alleging that they represented a majority of the employer's employees. The employer, of course, under the Taft-Hartley Act, is required to recognize and bargain with the union representing a majority of its employees and with no other union.[52] Any refusal on the part of the employer to bargain with representatives of his employees would be an unfair labor practice under Section 8 (b) (5) of the Act.

Under the provisions of the Act, the Board is authorized to decide the unit appropriate for collective bargaining purposes, and such power when invoked, is exclusive.[53]

"Therefore", held the court, "it is quite obvious that if there was any question whether plaintiffs or U.T.E. constituted the appropriate collective bargaining unit to represent the employees of Red Arrow, the 14th Judicial District Court [the state court] had no jurisdiction to adjudicate this question."[54]

International Brotherhood of Teamsters v. Red Ball Motor Freight[55] was a companion case to the *Red Arrow* case. In both cases, the lower state court was found to be without jurisdiction on the grounds that the National Labor Relations Act had pre-empted the field as to the acts therein involved.

In *Willoughby Camera Stores v. IAM*[56], the picketing was not con-

50. *Ibid.*
51. 264 S.W. 2d 787 (Tex. Civ. App. 1953) (*rehearing denied*, 1954).
52. 29 U.S.C. § 159(a).
53. *Id.*, § 159(b).
54. 264 S.W. 2d 787, 791.
55. 264 S.W. 2d 791 (Tex. Civ. App. 1953) (*rehearing denied*, 1954).
56. 131 N.Y.L.J. 7 (Sup Ct. N.Y. County, Feb. 23, 1954).

duct amounting to an unfair labor practice. In upholding an injunction issued by the lower court, it was held that: "Where the Act is not applicable an injunction in this Court is the appropriate remedy."

In *Ozone Metal Products v. Local 810*[57], the case was remanded to the state court from which it had been removed by defendant union. The facts showed an unfair labor practice in an industry engaged in interstate commerce. The facts also showed violence on the part of defendant in its picketing. Citing the *Garner* case as authority, the court held that the state court properly assumed jurisdiction over the labor dispute because of the violence involved. Had there been no violence, then the case would have been squarely in point with the *Garner* case, and the state court would have had no jurisdiction to enjoin the picketing.

A former member of defendant unions brought a suit for damages for unlawful inducement of breach of contract against said unions in *Bowen v. Bricklayers Union*[58], alleging that defendants had conspired to oust him from his employment. Plaintiff had contracted a job with a building contractor, but on defendants going to the contractor and threatening a general boycott throughout the state against him unless plaintiff was fired, the contractor did so discharge plaintiff. This was in violation of contract between plaintiff and the contractor.

Defendants maintained that the state court had no jurisdiction, and that plaintiffs only remendy was in the Taft-Hartley Act.[59] Their motion to dismiss on this ground was overruled. The South Carolina Supreme Court upheld the lower court's ruling, in the absence of a showing by defendants that the general contractor is engaged in interstate commerce, or that his activities so affect interstate commerce as to bring such dispute within the scope of the federal Act.

The Supreme Court of Alabama in the case of *Montgomery Building and Construction Trades Council v. Lebetter Erection Co.*[60] adopted the holding of the *Garner* and *Kinard* cases. The lower court injunction against picketing was reversed. The court was found to be without jurisdiction to enjoin picketing which amounted to unfair labor practices under the federal Act. Where a labor dispute affects interstate com-

57. U.S. Dist. Court, Eastern Dist. of New York, Feb. 9, 1954.
58. Supreme Court of South Carolina, Feb. 25, 1954.
59. 29 U.S.C. § 158(b) (1), (b) (2).
60. Supreme Court of Alabama, Spring Term 1954. 3 Div. 677. March 4, 1954.

merce, the Act vests exclusive jurisdiction to regulate such disputes in the federal Board, held the court.

The latest case at this time on the jurisdictional question is from Missouri, and is the case of *Gala-Mo Arts v. Laiben.*[61] Defendant union had filed an unfair labor practice charge against plaintiff, whereupon plaintiff went into the state court seeking damages against defendants. The theory of plaintiff's suit was that in filing the unfair labor practice charge, defendants did so solely to harass plaintiff and to force plaintiff to agree to a collective bargaining agreement providing for a union shop, initiation fees and checkoff of union dues. A conspiracy was alleged.

Defendants removed to the federal court. Plaintiff moved to remand, maintaining that his cause of action in the state court was not based upon any rights in the National Labor Relations Act or any other act of the United States.

The holding of the court is important enough to quote at length: "The rule as to whether a case arises under the laws of the United States is: Will a right, immunity, or claim asserted in the complaint be upheld if one construction is given the federal law, and will such be defeated if another construction is given? Plaintiff's complaint states that the defendants are 'harassing plaintiff' for the purpose of 'forcing plaintiff to agree to the demands of the union'. There is no allegation that defendants are doing any act that is illegal. If plaintiff is to be granted any relief on its complaint, it must be on the ground that defendants have wrongfully resorted to the procedures afforded by the National Labor Relations Act, or are trying to accomplish some illegal purpose thereby. Whether defendants' actions are wrongful or illegal is controlled by the interpretation given to the provisions of the Labor Act. If defendants are acting in accord with the provisions of the Act in bringing the charges plaintiff complains about, plaintiff can have no relief under the state's common law of torts. The question of what, if any, relief sought by plaintiff will be granted depends on the interpretation to be given the provisions of the National Labor Relations Act. We hold removal is authorized. Motion to remand will be denied."[62]

Although the *Garner* case was not cited by the court as the basis of

61. U.S. Dist. Ct., Eastern Dist. of Missouri, South-Eastern Division. March 12, 1954.

62. *Ibid.*

the holding, there can be no question but what it made such a holding possible.

IV

The reader who has waded this far will now realize that the *Garner* case is not as broad as a cursory reading might indicate. It has, however, created tremendous changes in the field of labor relations, and these are quite obvious from a reading of the cases discussed.

Applied to Missouri labor law, the change is even more readily apparent. The cases of *Fred Wolferman v. Root*,[63] that part of the decision in *State* ex rel *Allai v. Thatch*[64] not dealing with the obstruction of public ways, *Kincaid-Webber v. Quinn*,[65] and *Katz Drug Co. v. Kavner*[66], are now questionable law in Missouri.[67]

The bigger issue in Missouri is whether or not under the law of the *Garner* case injunctions issued on the basis of a conspiracy in restraint of trade will be upheld on appeal. Probably more restraining orders have been issued in Missouri on the theory of a conspiracy in restraint of trade than on any other theory. This includes *Rogers v. Poteet*[68], *Hobbs v. Poteet*[69] and the well-known case of *Gibony v. Empire Storage and Ice Company*.[70]

Picketing in such cases was enjoined on the theory that such acts were to coerce the company involved into refusing to sell their products to non-union purchasers. Under Section 8(b) (4) (A) of the federal Act, such conduct may amount to an unfair labor practice. This section makes it an unfair labor practice for a union "(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an

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63. 356 Mo. 976, 204 S.W. 2d 733 (1947).
64. 361 Mo. 190, 234 S. W. 2d 1 (1950) *(en banc)*.
65. 362 Mo. 375, 241 S.W. 2d 886 (1951).
66. 249 S.W. 2d 166 (Mo. 1952).
67. For a discussion of Missouri labor law in general and the above cited cases in particular, see: Shute, *A Survey of Missouri Labor Law*, 18 Mo. L. REV. 93-184 (1953).
68. 355 Mo. 986, 199 S.W. 2d 378 (1947).
69. 357 Mo. 152, 207 S.W. 2d 501 (1947).
70. 357 Mo. 671, 210 S.W. 2d 55 (1948) *(en banc), judgement affirmed*, 336 U.S. 490 (1949).

object thereof is: (A) forcing or requiring any employer . . . to cease doing business with any other person."

In such a case, where the act is both a violation of the federal legislation and the Missouri statute making criminal conspiracies in restraint of trade[71], it could well be that the act would come within the exception laid down by the *Garner* case, to-wit: "We have held that the state still may exercise its 'historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' "[72] On the other hand, there will certainly be a multiplicity of tribunals and diversity of results in such unfair practice cases unless the ruling of the *Garner* case is followed.

Those conspiracy cases which do not involve unfair labor practices are, of course, on the basis of the cases here discussed, apparently still within the jurisdiction of the state court.

V

Briefly reviewing, then, the findings of this work: the *Garner* case has been interpreted as holding that insofar as unfair labor practices involving interstate commerce are concerned, the federal government has pre-empted the field. Thus, state courts and state tribunals have no jurisdiction to deal with such cases. If there is any violence in such cases, however, the state court may properly take jurisdiction and enjoin any picketing connected with such violence. Should the federal Board, although having jurisdiction, for some reason refuse to assert it, there is some authority that the state may proceed. Unless the company concerned is in interstate commerce, or unless it meets the test of affecting such commerce, then the state court may assume jurisdiction, even though the same acts would amount to unfair labor practices were the company considered to be in interstate commerce.

It is too early yet to draw too many conclusions as to the effect of the *Garner* case on state labor relations. The cases discussed speak for themselves, but still leave much unsaid. It is the author's opinion at this point that the *Garner* case has revolutionized the field of labor relations so far as state jurisdiction is concerned—not as much as some would have us believe, but more than others care to admit.

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71. Mo. Rev. Stat. § 416.010 (1949).
72. 74 Sup. Ct. 161, 98 L.Ed. 161, 164 (1953).

It is submitted that the main problem raised by the *Garner* decision is that of expediting procedures before the National Labor Relations Board. To speak about expediting procedures before an administrative agency which is cut to the teeth by current governmental ideas of economy is almost as hopeless as attempting to restrain the ebbing and flowing of the tides. A competently run and organized Board cannot be had by cutting appropriations to such a level that the Board is short of necessary personnel and when many of the personnel as have survived the economic seige are so fearful that their survival is but of the moment that they are unable to do a competent and objective job. But both labor and management, now that state courts are to be denied jurisdiction in unfair labor practice cases, would seem to have the right to demand that the government facility be operated at least as expeditiously as the state system.

In any event, the *Garner* case is one of the most important and far-reaching decisions in the field of labor relations handed down by the Supreme Court for many years, and will bear watching for some time to come.